UNITED STATES DISTRICT COURT

for the
Eastern District of Wisconsin

In the Matter of the Search of:

Device A and Device B, more fully described in Attachment A.

Case No. 17-M-1204

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property:

Device A and Device B, more fully described in Attachment A.

located in the Eastern District of Wisconsin, there is now concealed:

See Attachment B.

The basis for the search under Fed. R. Crim P. 41(c) is:

- ☒ evidence of a crime;
- ☐ contraband, fruits of crime, or other items illegally possessed;
- ☐ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to violations of: Title 18, United States Code, Section 1344 (Bank Fraud).

The application is based on these facts: See attached affidavit.

☐ Delayed notice of _______ days (give exact ending date if more than 30 days: _______________) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

[signature]
Applicant's signature

Brad Simons, Special Agent, FBI
Printed Name and Title

Sworn to before me and signed in my presence:

Date: 2/1/17

[signature]
Judge's signature

City and State: Milwaukee, Wisconsin

Honorable William Duffin, U.S. Magistrate Judge
Printed Name and Title

AFFIDAVIT IN SUPPORT OF AN APPLICATION UNDER RULE 41 FOR A WARRANT TO SEARCH AND SEIZE

I, Brad Simons, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a search warrant authorizing the examination of property—an electronic device—which is currently in law enforcement possession, and the extraction from that property of electronically stored information described in Attachment B.

2. I am a Special Agent with the Federal Bureau of Investigation ("FBI"), and have been so employed since 2014. I am currently assigned to the Milwaukee Area Violent Crimes Task Force ("MAVCTF"). My duties as a Special Agent with the FBI include investigating violent crimes such as armed robberies, car jackings, bank robberies, and violent criminal enterprises. I have gained experience in the conduct of such investigations through previous case investigations, formal training, and in consultation with law enforcement partners in local, state and federal law enforcement agencies. I have executed numerous warrants to search and seize electronic devices, such as cellular telephones and computers.

3. This affidavit is intended to show only that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

IDENTIFICATION OF THE DEVICES TO BE EXAMINED

4. The property to be searched includes a black Inter-Quest computer with barcode number 014924, hereinafter Device A. The property to be searched also includes a black Western Digital external hard drive, model number WD2500D032-000 and serial number

WCANKE260823, hereinafter Device B. Device A and Device B (the Devices) are currently located at Dodge County Sheriff's Office located at 124 West St. Juneau, WI 53039.

5. The applied-for warrant would authorize the forensic examination of the Devices for the purpose of identifying electronically stored data particularly described in Attachment B.

PROBABLE CAUSE

6. Gary Bortz owned and operated a used car dealership. He "double floor-planned" his inventory by obtaining two lines of credit from two financial institutions to finance the same inventory of vehicles. On June 7, 2016, the federal grand jury returned a six-count indictment alleging that Mr. Bortz committed a scheme to defraud American National Bank of Beaver Dam through his "double-floor planned" scheme.

7. Floor-plan financing is a loan that is secured by the business's inventory of vehicles and paid off as the vehicles are sold. When Bortz began his business in May 2004, he entered into a $400,000 floor-plan agreement with American National Bank of Beaver Dam. In the agreement, Bortz agreed to keep his inventory free from any other encumbrances.

8. Two months later, on July 13, 2004, Bortz entered into a second floor-plan agreement with Automotive Finance Corporation ("AFC"), which is an automobile loan company based in Indiana. Bortz entered into this second floor-plan financing agreement without notifying American National Bank. His original line of credit from AFC was $50,000.

9. Over the next several years, Bortz increased his line of credit with AFC. By April 2007, he increased it to $200,000.

10. In March 2009, American National Bank discovered that Bortz had a floor-planning agreement with AFC when it filed its UCC financing statement. A UCC financing statement is what creditors file with the Wisconsin Department of Financial Institutions to

"perfect" their security interest. The filing gives public notice that the creditor has the right to take possession of and sell certain assets for repayment of a debt with a certain priority. AFC filed its UCC statement in 2004, which effectively gave AFC priority over American National Bank.

11. After discovering in 2009 that Bortz had another floor-plan agreement with AFC, American National Bank's senior loan officer, Mark Heuer, spoke to Bortz about it. According to Heuer, Bortz said that he only used the line of credit from AFC to purchase the cars immediately at the auctions, and that he paid AFC right after he received his funds from American National Bank. Bortz also said that the line of credit from AFC was approximately $50,000. Bortz claimed that he usually paid AFC within seven days from the time he purchased the cars at the auction. Bortz also told Heuer that if American National Bank required him to drop financing with AFC, then that would "put him out of business" because he does not have the cash flow necessary to make the purchases right at the auction. Relying upon Bortz's representations to Heuer, he did not insist that Bortz drop AFC's finance. Heuer did not know, though, that by this time Bortz actually had a $200,000 line of credit with AFC and that Bortz was double-floor planning his vehicles.

12. On March 5, 2010, Bortz executed another written floor-plan agreement with American National Bank, in which American National Bank agreed to provide the same $400,000 line of credit to Bortz's business. In the agreement, Bortz represented and promised that all the collateral for the loan was owned by Bortz free and clear of any security interest or encumbrances except those granted to American National Bank.

13. Approximately a year-and-half later, on September 1, 2011, Bortz increased his line of credit with AFC to $300,000.

14. Neither American National Bank nor AFC knew that Bortz was "double floor-planning" his vehicles. Unlike what he told Heuer, after receiving financing from American National Bank to purchase vehicles, Bortz did not immediately pay AFC. Rather, he financed the same vehicles with lines of credit from both AFC and American National Bank. By doing so, both American National Bank and AFC had a security interest in the same vehicle.

15. For instance, on February 26, 2014, Bortz purchased a Subaru Forester from an auction. AFC financed the purchase of it the same day by paying the auction house $9230.00. Approximately one month later, on March 28, 2014, Bortz faxed a purchase receipt of the Forester to American National Bank to finance the same vehicle for $9130.00. American National Bank then deposited $9130.00 into Bortz's business account. So, by March 28, 2014, AFC and American National Bank had a simultaneous security interest in that same vehicle.

16. Approximately six months later, in September 2014, Bortz sold the Forester. He then paid AFC the $9230.00 that it had loaned him for the purchase of the vehicle. He never paid American National Bank back for the purchase of the same vehicle, and because he already sold it, American National Bank was unable to enforce its security interest.

17. In October 2014, Bortz was unable to make payments to both AFC and American National Bank. So, on October 17, 2014, AFC seized all of Bortz's vehicles to enforce its security interest. Due to Bortz's double floor-planning scheme, American National Bank had a security interest in the same vehicles, but was unable to enforce its security interest. It lost $386,950 that it had loaned to Bortz.

18. In November 13, 2014, state investigators executed a search warrant at Bortz's dealership. During the execution of that search warrant, on November 13, 2014, investigators seized the Devices described in Attachment A.

19. The Devices are currently in the lawful possession of the Dodge County Sheriff's Office. They came into DCSO's possession during the execution of the state warrant executed on November 13, 2014 at Bortz' dealership. Therefore, while the Dodge County Sheriff's Office might already have all necessary authority to examine the Devices, I seek this additional warrant out of an abundance of caution to be certain that an examination of the Devices will comply with the Fourth Amendment and other applicable laws.

20. The Devices are currently in storage at Dodge County Sheriff's Office located at 124 West St. Juneau, WI 53039. In my training and experience, I know that the Devices have been stored in a manner in which its contents are, to the extent material to this investigation, in substantially the same state as they were when the Devices first came into the possession of the Dodge County Sheriff's Office.

TECHNICAL TERMS

21. Based on my training and experience, I use the following technical terms to convey the following meanings:

a. IP Address: An Internet Protocol address (or simply "IP address") is a unique numeric address used by computers on the Internet. An IP address is a series of four numbers, each in the range 0-255, separated by periods (e.g., 121.56.97.178). Every computer attached to the Internet computer must be assigned an IP address so that Internet traffic sent from and directed to that computer may be directed properly from its source to its destination. Most Internet service providers control a range of IP addresses. Some computers have static—that is, long-term—IP addresses, while other computers have dynamic—that is, frequently changed—IP addresses.

b. Internet: The Internet is a global network of computers and other electronic devices that communicate with each other. Due to the structure of the Internet, connections between devices on the Internet often cross state and international borders, even when the devices communicating with each other are in the same state.

ELECTRONIC STORAGE AND FORENSIC ANALYSIS

22. Based on my knowledge, training, and experience, I know that electronic devices can store information for long periods of time. Similarly, things that have been viewed via the Internet are typically stored for some period of time on the device. This information can sometimes be recovered with forensics tools.

23. There is probable cause to believe that things that were once stored on the Devices may still be stored there, for at least the following reasons:

a. Based on my knowledge, training, and experience, I know that computer files or remnants of such files can be recovered months or even years after they have been downloaded onto a storage medium, deleted, or viewed via the Internet. Electronic files downloaded to a storage medium can be stored for years at little or no cost. Even when files have been deleted, they can be recovered months or years later using forensic tools. This is so because when a person "deletes" a file on a computer, the data contained in the file does not actually disappear; rather, that data remains on the storage medium until it is overwritten by new data.

b. Therefore, deleted files, or remnants of deleted files, may reside in free space or slack space—that is, in space on the storage medium that is not currently being used by an active file—for long periods of time before they are overwritten. In addition, a computer's operating system may also keep a record of deleted data in a "swap" or "recovery" file.

c. Wholly apart from user-generated files, computer storage media—in particular, computers' internal hard drives—contain electronic evidence of how a computer has been used, what it has been used for, and who has used it. To give a few examples, this forensic evidence can take the form of operating system configurations, artifacts from operating system or application operation, file system data structures, and virtual memory "swap" or paging files. Computer users typically do not erase or delete this evidence, because special software is typically required for that task. However, it is technically possible to delete this information.

d. Similarly, files that have been viewed via the Internet are sometimes automatically downloaded into a temporary Internet directory or "cache."

24. *Forensic evidence.* As further described in Attachment B, this application seeks permission to locate not only electronically stored information that might serve as direct evidence of the crimes described on the warrant, but also forensic evidence that establishes how the Devices were used, the purpose of its use, who used it, and when. There is probable cause to believe that this forensic electronic evidence might be on the Devices because:

a. Data on the storage medium can provide evidence of a file that was once on the storage medium but has since been deleted or edited, or of a deleted portion of a file (such as a paragraph that has been deleted from a word processing file). Virtual memory paging systems can leave traces of information on the storage medium that show what tasks and processes were recently active. Web browsers, e-mail programs, and chat programs store configuration information on the storage medium that can reveal information such as online nicknames and passwords. Operating systems can record additional information, such as the attachment of peripherals, the attachment of USB flash storage devices or other external storage media, and the times the computer was in use. Computer file systems can record information about the dates files were created and the sequence in which they were created.

b. Forensic evidence on a device can also indicate who has used or controlled the device. This "user attribution" evidence is analogous to the search for "indicia of occupancy" while executing a search warrant at a residence.

c. A person with appropriate familiarity with how an electronic device works may, after examining this forensic evidence in its proper context, be able to draw conclusions about how electronic devices were used, the purpose of their use, who used them, and when.

d. The process of identifying the exact electronically stored information on a storage medium that are necessary to draw an accurate conclusion is a dynamic process. Electronic evidence is not always data that can be merely reviewed by a review team and passed along to investigators. Whether data stored on a computer is evidence may depend on other information stored on the computer and the application of knowledge about how a computer behaves. Therefore, contextual information necessary to understand other evidence also falls within the scope of the warrant.

e. Further, in finding evidence of how a device was used, the purpose of its use, who used it, and when, sometimes it is necessary to establish that a particular thing is not present on a storage medium.

25. *Nature of examination.* Based on the foregoing, and consistent with Rule 41(e)(2)(B), the warrant I am applying for would permit the examination of the Devices consistent with the warrant. The examination may require authorities to employ techniques, including but not limited to computer-assisted scans of the entire medium, that might expose many parts of the devices to human inspection in order to determine whether it is evidence described by the warrant.

26. *Manner of execution.* Because this warrant seeks only permission to examine the devices already in law enforcement's possession, the execution of this warrant does not involve the physical intrusion onto a premises. Consequently, I submit there is reasonable cause for the Court to authorize execution of the warrant at any time in the day or night.

CONCLUSION

27. I submit that this affidavit supports probable cause for a search warrant authorizing the examination of the Devices described in Attachment A to seek the items described in Attachment B.

ATTACHMENT A

The property to be searched includes a black Inter-Quest computer with barcode number 014924, herein referred to as Device A. The property to be searched also includes a black Western Digital external hard drive, model number WD2500D032-000 and serial number WCANKE260823, herein referred to as Device B

This warrant authorizes the forensic examination of Device A and Device B for the purpose of identifying the electronically stored information described in Attachment B.

ATTACHMENT B

1. All records on the Devices described in Attachment A that relate to violations of Title 18, United States Code, Section 1344 (Bank Fraud) and involve Gary Bortz since May 1, 2004, including:

a. Communications between Bortz and American National Bank

b. Communications between Bortz and AFC

c. lists of customers and related identifying information

d. all bank records, checks, credit card bills, account information, and other financial records

e. information regarding Bortz' floor planning with American National Bank and AFC

2. Evidence of user attribution showing who used or owned the Devices at the time the things described in this warrant were created, edited, or deleted, such as logs, phonebooks, saved usernames and passwords, documents, and browsing history;

As used above, the terms "records" and "information" include all of the foregoing items of evidence in whatever form and by whatever means they may have been created or stored, including any form of computer or electronic storage (such as flash memory or other media that can store data) and any photographic form.